FILE
AUG 21 1
JOHN T. FEY,

No. 337

IN THE

SUPREME COURT

OF THE

United States

October Term, 1956

ARTHUR PARISETTE CLARK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

J. B. TIETZ
257 S. Spring Street
Los Angeles 12, Calif.
Counsel for Petitioner.

TOPICAL INDEX

	Page
Petition for Writ of Certiorari	1
1. Opinion of the Court Below	2
2. Statutory Provision Sustaining Jurisdiction	2
3. Questions Presented and How Raised	2
4. Statutes and Regulations Involved	5
5. Statement of the Case	5
6. Reasons for Granting the Writ	9
Conclusion	16
Appendix A	App. 1
Opinion of Court Below	
Order of Submission	App. 1
Order Directing Filing of Opinion and Filing and Recording of Judgment	App. 2
The Facts	App. 3
The Appeal	App. 11
Appendix B	App. 23
Judgment	App. 23
Appendix C	App. 25
Order Denying Petition for Rehearing	App. 25
Certificate of Clerk, U. S. Court of Appeals for the Ninth Circuit to Record Certified Under Rule 21 of the Revised Rules of the Supreme Court of the United States	App. 25
Appendix D	App. 27
Constitutional Provisions Involved	App. 27
VIth Article (3rd Clause) of the Constitution	App. 27
1st Amendment	App. 27

Page
Statutes and Regulations Involved ..... App. 27
Army Regulation ..... App. 34

TABLE OF CASES AND AUTHORITIES CITED

Cases

Chernekoff vs. United States, 9th Cir., 1955, 219 F. 2d 721, 725 ..... 9, 10, 15
Davidson vs. United States, 349 U.S. 918 10
Niznik vs. United States, 6th Cir., 1949, 173 F. 2d 328 15
St. Joseph Stockyards vs. U. S., 298 U.S. 38 12
United States vs. Schwartz, E.D. of N.Y. Cr. No. 43793, Dec. March 15, 1956 15
U. S. ex rel. Bayly vs. Record, 51 F. Supp. 507, 515 13
U. S. vs. Fry, 2d Cir., 1953, 203 F. 2d 638 15
U. S. vs. Laier, 52 F. Supp. 392 13
U. S. vs. Peterson, 53 F. Supp. 760 13
U. S. vs. Pitt, 3d Cir., 1944, 144 F. 2d 169 15
Yamatoga vs. Fisher, 189 U.S. 86 13

Authorities

United States Constitution
Article VI, Section 3 ..... 5, 11
First Amendment 5, 11
Fifth Amendment 5
Universal Military Training and Service Act (50 U.S.C. App.) (Supp. V) 1
Sections 1(c), 12(a), 451(c), 462 5

Page
Section 6(j) 11
Section 456(j), 65 Stat. 75, 83, 86 5
18 U.S.C., Section 3231 2
28 U.S.C., Section 1254(1) 2
32 C.F.R., Section 1604.41 ..... 4, 5, 12
32 C.F.R., Sections 1626.25, 1626.26 5
32 C.F.R., Section 1624 1 (b) 15

IN THE

SUPREME COURT

OF THE

United States

October Term, 1956

ARTHUR PARISETTE CLARK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

No. .....

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Southern District of California, Central Division, convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

1. OPINION OF THE COURT BELOW:

The opinion of the United States Court of Appeals is not yet reported. It is in the Record, pages 51-67. It is also Appendix A to this petition.

2. STATUTORY PROVISION SUSTAINING JURISDICTION.

The judgment of the Court of Appeals was entered on June 20, 1956 [R. 68;* also see Appendix B to this petition].

The final judgment of the Court of Appeals (denial of the seasonably filed Petition for Rehearing) was entered on July 23, 1956. [R. 69; also see Appendix C to this petition]. The petition for writ of certiorari is filed within the required thirty days' time.

The jurisdiction of this Court rests on Section 1254 (1) of the Judicial Code, 28 U. S. C. The district court has jurisdiction under 18 U. S. C. §3231.

3. QUESTIONS PRESENTED AND HOW RAISED.

I.

The record shows that the armed forces induction ceremony did not follow the applicable regulations in that the only evidence on the subject (pp. 178U and 179U of the government's exhibit) shows that the selec-

*All references to the Transcript of Record are designated by pages of it, as follows: [R. 3]. The entire Selective Service File of appellant was entered in evidence as Government's Exhibit 1. All references to the file are designated by pages of Exhibit 1, as follows: [Ex. 3]; the pagination of Exhibit 1 is by a one-quarter inch high pencilled number, circled, and ordinarily is found at the bottom of each sheet of Exhibit 1.

tee was given only one chance to submit to induction and was given no warning of the penalty. The regulation (SR 615-180-1) requires that *two* opportunities be given the selectee to refuse to submit to induction and that the second opportunity be preceded by a warning of the penalty.

The question presented is whether the requirements of the regulation are mandatory and whether proof of compliance is a burden of the prosecution. This point was raised by written motion for judgment of acquittal [T.R. 7], point one:

> "There is no evidence to show that defendant is guilty as charged in the indictment,"

and point two:

> "The Government has wholly failed to prove a violation of the Act and Regulations by the defendant as charged in the indictment."

II.

The record undisputably shows that on his second administrative appeal petitioner was deprived of *all* the "special" appellate procedures prescribed by Congress.

The questions presented here are whether a selective service registrant's claim, showing on its face that it is based on agnosticism, may be summarily "short-circuited" and second, whether in the life of a college student the passing of 23 months of time is alone a sufficient "new fact" to justify a reinvestigation of his attitude towards military service. Point 4 of the motion raised this question.

III.

The record shows that petitioner from the first asserted that he was a conscientious objector to participation in warfare but that he also stated he didn't believe in a "Supreme Being."

The law requires that a registrant establish that he believes in a Supreme Being.

The question presented is whether the law discriminates against religions that do not believe in a Supreme Being and against registrants whose religion is not one that is expressed in orthodox terms. Point 5 of the Motion raised this question.

IV.

The undisputed evidence is that the local board failed to have available an Advisor to Registrants and to have posted conspicuously or any place, the names and addresses of such advisor, as *then* mandatorily required by the Regulations, Section 1604.41.

The question presented is whether this violation of law alone, or in connection with other circumstances in evidence constituted a denied of due process. Point 10 of the Motion raised this point.

4. STATUTES AND REGULATIONS INVOLVED.

Article VI §3 of the United States Constitution is involved; also Amendments I and V.

Section 1 (c) of the Universal Military Training and Service Act (50 U. S. C. App. (Supp. V) §451 (c)) is involved. Also, Section 6 (j) of the Act must be considered (50 U. S. C. App. (Supp. V) §456 (j), 65 Stat. 75, 83, 86), and §12 (a).

Sections 1604.41, 1626.25 and 1626.26 of the Regulations (32 C. F. R.) are involved.

All sections of the Act and of the Regulations, not set forth in the argument, are printed as Appendix D, below.

5. STATEMENT OF THE CASE

Appellant was indicted under U. S. C., Title 50, App. Sec. 462 (Universal Military Training and Service Act, for refusing to submit to induction. [R. 3]

Appellant pleaded Not Guilty, waived jury trial and was tried on November 23, 1954. [R. 5-6] Appellant was convicted on December 13, 1954 [R. 12] and sentenced on December 20, 1954. [R. 13]

At the close of the evidence, a Motion for Judgment of Acquittal was made, argued, and denied [R. 7-8]; a Motion for New Trial was heard on December 20, 1954; it included a renewed and expanded Motion for Judgment of Acquittal and was supported by Appellant's Affidavit; these Motions also were denied. [R. 9-14]

Appellant was born on November 26, 1928. On October 6, 1948 he duly executed the eight-page Classification Questionnaire of the Selective Service System, for Local Board No. 99, claiming therein that he was a conscientious objector; [Ex. 10]* nevertheless, and contrary to the regulations, this local board did not send him the four-page Special Form for Conscientious Objectors, but classified him in Class I-A on October 12, 1948 [Ex. 11]. However, twenty months thereafter, on June 8, 1950, it did hand him said Special Form. [Ex. 11]. Appellant duly executed said Special Form.

When the local board retained him in Class I-A he appealed. Pursuant to the requirements of the law an F.B.I. investigation was made of his background, a hearing was held by a Hearing Officer of the Department of Justice who analyzed the evidence, and the file was sent to the Appeal Board, by the Department, with an adverse recommendation, on June 5, 1952. During said period, the practice of the Department was to also send the Appeal Board a copy of the Hearing Officer's analysis and advisory report to the Department. The Hearing Officer's report noted that appellant calls himself an agnostic and that the various churches he attended are not affiliated with any pacifist sect or teach pacifism. [Ex. 47-48]

When ordered to report for induction, appellant reported, but refused to submit to the induction ceremony.

---

*Ex refers to the Government's exhibit, the selective service file of appellant. The pagination is at the bottom of each sheet of the exhibit, circled.

When prosecuted, appellant won a judgment of dismissal on March 12, 1953. The trial judge made an *in camera* inspection of the FBI reports, and finding that they contained adverse material indicated he was going to admit them in evidence. Thereupon the United States Attorney announced he desired to dismiss the case. [R. 10-11, Ex. 111u]*

Appellant was thereafter reprocessed by the Selective Service System and was again denied a conscientious objector's classification. The exhibit reveals that on the second reprocessing, the United States Attorney deprived appellant of the usual FBI investigation of his *current* character and reputation (on the subject of his conscientious objections) and also deprived him of a hearing by a Hearing Officer of the Department of Justice (although the Appeal Board had requested that it be aided by such investigation and hearing [Ex. 126u] for the sole, given reason that appellant did not believe in a Supreme Being. [Ex. 127u]

When again ordered to report for induction appellant reported but refused to submit to induction. Thereupon he was indicted. [R. 3]

During the trial the Government introduced the selective service file and rested. The sole evidence in it that appellant had refused to submit to induction was (1) the letter from the inducting officer to the United States Attorney stating that "d. Registrant

*All pages of the Exhibit were repaginated, after Appellant's reprocessing by the Selective Service System. Pages with a "u" after the numbers are underscored, not circled, numbers.

did, on 8 January 1954, refuse to submit to induction because he claims to be a member of the First Unitarian Church of Los Angeles.

"e. Witnesses: The following officer and enlisted man of this organization witnessed the verbal refusal and signed statement of this registrant to submit to induction:

Earl S. Beydler, Captain, Inf.
George J. Newton, Jr.,
M/Sgt., U. S. Army" [Ex. 178u]

and (2) the selectee's written refusal which was as follows:

"January 8, 1954

"I refuse to be inducted into the Armed Forces of the United States.

/s/ Arthur P. Clark" [Ex. 179u]

During the trial a high selective service official testified there was no posting of names and addresses of Advisors to Registrants and in fact there were no Advisors to Registrants appointed. [R. 21]

6. REASONS FOR GRANTING THE WRIT.

I.

It is of importance to *all* persons that there be a clear line of demarcation between civilian status and military status.

Under the 1917 draft law every selective service registrant became subject to martial law upon the mailing to him, by the local board, of an Order to Report for Induction. In 1940 (and in all subsequent draft laws) Congress made clear that a civilian was to remain a civilian, and subject only to civil law penalties until the moment when he knowingly and voluntarily submitted to induction.

The induction ceremony (now covered by Special Regulation 615-180-1) is designed to provide a clear line of demarcation. Among its provisions is one expressly designed to give a hesitant, uncertain or recalcitrant "registrant a last clear chance to change his mind and accept induction rather than certain indictment and possible conviction for a felony carrying a maximum punishment of five years or a fine of $10,000 or both. *The regulation is couched in mandatory,* not discretionary language." (*Chernekoff vs. United States,* 219 F. 2d 721, 725; italics supplied).

The record is uncontradicted that the prosecution showed only that *one* chance to refuse induction was given to petitioner. Also, that he was never warned of the penal consequences of his refusal. Petitioner therefore submits that the record shows a failure of proof that is fatal to a verdict of guilty.

The Court of Appeals attempted to distinguish petitioner's case from the facts in its own *Chernekoff* (*supra*) decision. The only "distinguishing" fact *pointed out* by the Court of Appeals is in the sentence, "The *Chernekoff* statement was not *dated*" (slip opinion page 10). What significance this difference was supposed to have was not stated. It is submitted that it is an irrelevant difference.

II.

Another question presented is whether a registrant professing to be a conscientious objector may be summarily deprived of the "special" appellate procedures provided for such registrants by Congress. This deprivation was accomplished by non-appellate officials, ones who act on the belief that the registrant's professions "on their face" were not within the intent of Congress.

This question was partially considered by the Court in the case of *Davidson vs. United States,* 349 U.S. 918 wherein the Court remanded for a decision on a connected point. This Court has never directly decided the question.

It must not be overlooked that this petitioner's case is clearly distinguishable from Davidson's: Davidson did not perfect a second administrative appeal; nor was he entitled to one; petitioner Clark was entitled to one and therefore should have been given *all* the appellate procedures. Davidson merely asked for a postponement of induction (218 F. 2d 609, 611) and his

local board mistakenly started him on the road towards a second appeal; Clark concededly acted in a timely and suitable manner and, *as a matter of right* did perfect an appeal from the second adverse classification (see slip opinion of Ninth Circuit, page 9, decided June 20, 1956. Appendix A).

It is important that no intermediate official be permitted to "short-circuit" persons entitled to administrative appeals. This Court should put a stop to such officious practices.

III.

An important constitutional question involved and not yet decided is whether the innovation in the 1948 and 1951 laws, the so-called "Supreme Being Clause" offends the VIth Article (3rd clause) and/or the First Amendment.

Petitioner is personally affected by this clause in the Act and is in a position to raise this question for he informed the selective service system, on his classification questionnaire, that he didn't believe in a Supreme Being. The law requires that a registrant believe in a Supreme Being to qualify for a conscientious objector classification. [§6(j)] The Department of Justice recommended to the appeal board that petitioner be denied a conscientious objector classification because he didn't qualify under the law.

IV.

Another important question presented by this petition has not been determined by this Court but should be.

It is whether the failure to conspicuously post the names and addresses of Advisors to Registrants is alone a denial of due process.

It is undisputed that appellant's local board never complied with §1604.41 of the regulations (32 C.F.R.) either with respect to *posting* or even to *having* such officials.

> "ADVISORS TO REGISTRANTS
> "1604.41 APPOINTMENT AND DUTIES
>
> "Advisors to registrants shall be appointed by the Director of Selective Service upon recommendation of the State Director of Selective Service to advise and assist registrants in the preparation of questionnaires and other selective service forms and to advise registrants on other matters relating to their liabilities under the Selective Service Law. Every person so appointed should be at least 30 years of age. The names and addresses of advisors to registrants with the local board area shall be conspicuously posted in the local board office."

The failure to provide the registrant an essential protection, a protection specifically required by the regulation then in effect, results in a *jurisdictional* failure.

St. Joseph Stockyards vs. U. S., 298 U.S. 38;

Yamatoga vs. Fisher, 189 U.S. 86;
U. S. vs. Laier, 52 F. Supp. 392;
U. S. vs. Peterson, 53 F. Supp. 760;
U. S. ex rel. Bayly vs. Record, 51 F. Supp. 507, 515.

It is settled generally that due process within an administrative agency requires that those administering it strictly follow protective regulations.

On the other hand, if prejudice to petitioner need be shown by reason of the failure to have Advisors, the record in this case shows that it existed.

There are six separate items of prejudice to petitioner:

1) Petitioner presented no "new" evidence at his personal appearance before the board. The situation would have been vastly different if petitioner had consulted an attorney or had had an advisor because there is no conscientious objector who has received advice on the advisability of presenting "new or further evidence" at such a hearing who cannot recall additional incidents and facts of his life history that show his position on pacifism, the expressions he had made of his views, his religious training, his pacifist associates, their discussions, etc., etc., and who cannot secure some, more or better, testimonial affidavits, etc., etc., *if and after* he had advice on the necessity of such "new" evidence.

2) Petitioner didn't bring any witnesses to his local board hearing. An Advisor would have impressed him with the influence that certain types

of witnesses [ministers, for example] have on the board; petitioner, like all pacifists in Los Angeles, had available a number of eminent Los Angeles ministers who, in almost identical cases, have shown local boards that the views of its registrants, seen through their expert eyes truly represented "religious" views so that the board could recognize them as "within" the law.

Disavowals of belief in a Supreme Being are often semantic problems and sometimes mere sophomoric expression. Many a self-styled agnostic is rated a "believer" by experienced ministers of the liberal denominations.

3) At the hearing before the local board petitioner didn't avail himself of the several other opportunities granted to him by the regulations and by the court decisions that have construed the law and have definitely determined what constitutes a fair hearing. An Advisor would have informed him of his right to point out material in his file that he believed may not have been given sufficient weight and to explain and to discuss matters concerning which he believes the board seemed uncertain or unconvinced.

4) Petitioner never answered the adverse material in the Department's recommendation and the Hearing Officer's summary. An Advisor would have pointed out to the registrant the necessity of doing this at the hearing. That the registrant could have done so is shown by his affidavit [R. 10-11].

5) Petitioner on his second appeal, wasn't given the Hearing Officer hearing and the Attorney General's recommendation procedure. A good

Advisor would certainly have aided the registrant in this problem and the Department, out of an abundance of precaution might well have given the registrant the "full treatment" on the second round as it had given him the first, two years before. Many other agnostics have received the "full treatment" just as petitioner did on his first administrative appeal.

6) Prejudice to petitioner also exists by reason of the following: The regulations forbid a registrant to bring a lawyer with him to the hearing before the local board. 32 C.F.R. 1624 1 (b). Also see *United States vs. Pitt,* 3d Cir., 1944, 144 F. 2d 169; *Niznik vs. United States,* 6th Cir., 1949, 173 F. 2d 328, and *United States vs. Schwartz,* E.D. of N.Y. Cr. No. 43793, Dec. March 15, 1956. Since petitioner was refused the right to counsel before the board (to make a record on which he later is to face a felony charge) it was important *that he be advised* he could have the services of an advisor, this right being accorded him by the regulations themselves. The requirement of the *posting* is a vital requirement. Failure to post is not a harmless violation of the law. If the failure to give actual notice of violation of the law. If the failure to give actual notice of classification following personal appearance is a denial of due process (*United States vs. Fry,* 2d Cir., 1953, 203 F. 2d 638) the same reasoning declares the failure to give presumptive notice by posting is a denial of due process. Petitioner submits this is the import of *Chernekoff vs. United States,* 9th Cir., 1955, 219 F. 2d 721.

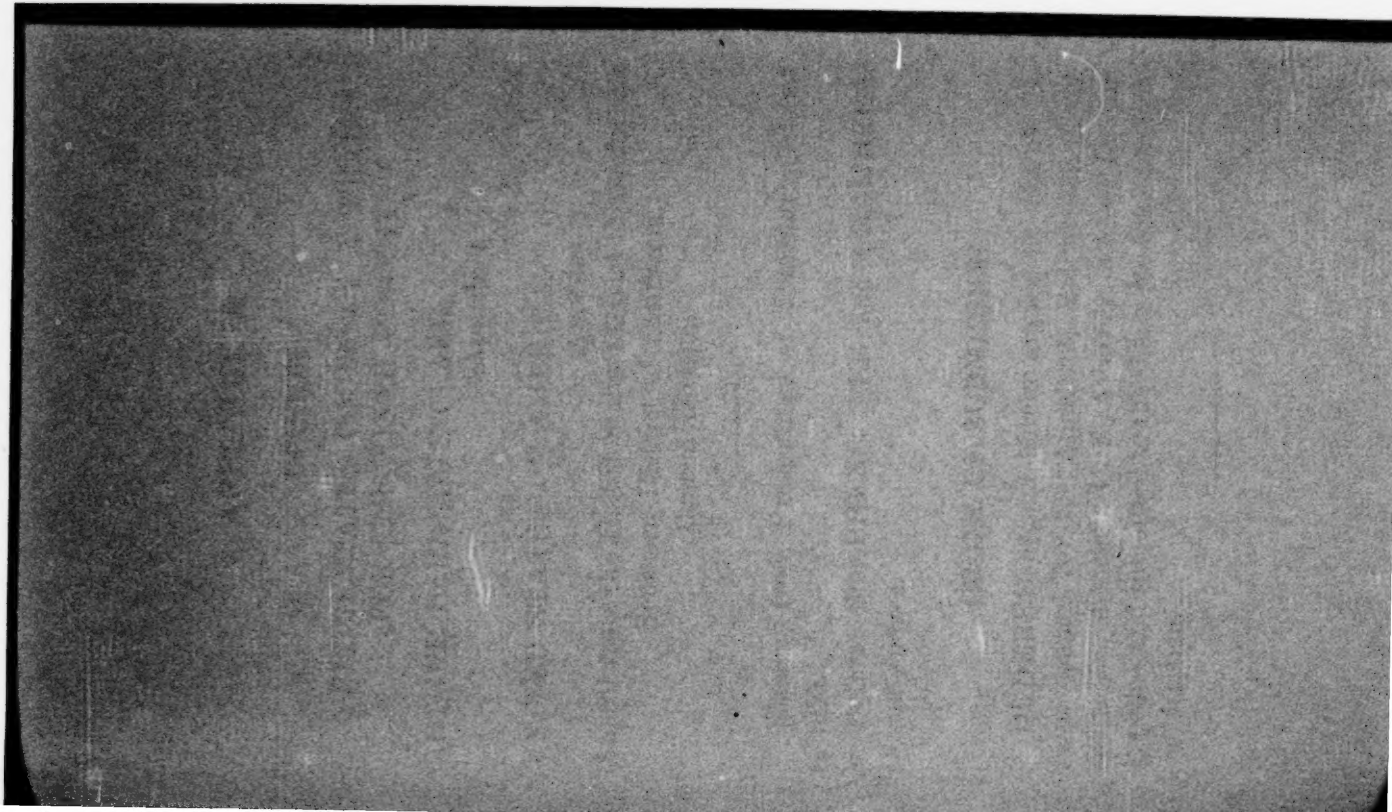
CONCLUSION

This petition should be granted for one or more of the four reasons herein stated.

Respectfully submitted,

J. B. TIETZ,
Counsel for Petitioner.

August, 1956.



APPENDIX A

OPINION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARTHUR PARISETTE CLARK,)
Appellant,)
vs.) No. 14634
UNITED STATES OF AMERICA,)
Appellee.)

Appeal from the United States District Court for the Southern District of California, Central Division.

Excerpt from Proceedings of Thursday, October 6, 1955.

Before: STEPHENS, FEE and CHAMBERS, Circuit Judges.

ORDER OF SUBMISSION

ORDERED appeal herein argued by Mr. J. B. Tietz, counsel for the Appellant, and by Mr. Cecil Hicks, Jr., Assistant U. S. Attorney, counsel for the Appellee, and submitted to the Court for consideration and decision.

[TITLE OF COURT AND CAUSE]

Excerpt from Proceedings of Friday, June 20, 1956.

Before: STEPHENS, FEE and CHAMBERS, Circuit Judges.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

Before: STEPHENS, FEE and CHAMBERS, Circuit Judges.

STEPHENS, Circuit Judge.

Appellant Arthur Parisette Clark, a Service selectee, was charged with and was found guilty of and was sentenced for wilfully refusing to be inducted into the Armed Forces of the United States, in violation of the Universal Military Training and Service Act, Title 50 U.S.C.A. Appendix §451[1] et seq., §462(a).[2] He appealed.

We review the long chronology of events that led up to appellant's conviction.

---

[1]June 24, 1948, c. 625, Title I, 62 Stat. 604.
[2]June 24, 1948, c. 625, Title I, §12, 62 Stat. 622.

THE FACTS

Appellant registered with the Selective Service System on October 6, 1948, and at that time filled in Series XIV, page 7, of the Classification Questionnaire which indicated he was a conscientious objector. The Special Form, SSS150, for Conscientious Objector, was not filed. Whether he obtained one, we do not know. On October 12, 1948, the appellant-selectee was classified I-A by the Local Board and no appeal was taken.

On June 8, 1950, appellant was handed a Form 150 by the Local Board, but it was not returned. On October 3, 1950, he was found physically acceptable for service. October 4, 1950, the Board received from Chapman College a letter stating that appellant was "regularly in attendance upon classes." On October 28, 1950, he was ordered to report for induction on November 8, 1950. He did not report for induction. However, on November 14, 1950, the Board postponed induction until June, 1951, because of his student status.

On June 27, 1951, appellant received from his board another SSS Form 150, which he returned completed the next day. The questionnaire contained the question:

"Do you believe in a Supreme Being?"

with the word "Yes" with a place for checking, and the word "No" and a place for checking. Appellant checked the word "No" and added,

> "I do not know whether or not a Supreme Being exists."

It therefore appears that appellant's claimed religion is not based upon the existence of a Supreme Being.[3]

---

[3]Following are the pertinent parts of Selective Service System "SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR", SSS Form 150, filled in and signed by appellant-selectee:

"Series I.—CLAI FOR EXEMPTION.

"(A) • • •

"(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to noncombatant service in the armed forces, be deferred as provided in Section 6(j) of the Selective Service Act of 1948.

[signed] Arthur P. Clark
(Signature of registrant)

"Series II—RELIGIOUS TRAINING AND BELIEFS.

"1. Do you believe in a Supreme Being? Yes [ ], No [X] 'I do not know whether or not a supreme being exists.'

"2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

'I believe that the individual is of supreme worth—or more value than all material goods, cultural accumulations, or states and governments. I do not believe that any individual has the moral right to take the life of another human being. I believe that all persons participating in the work of the armed forces are in part responsible for the destruction of human life which the armed forces is accomplishing.'

"3. Explain how, when and from whom or from what sources you received the training and acquired the belief which is the basis of your claim made in Series I above.

'My present beliefs are the result of a gradual development of my thinking over a long period of time—of my study and observations and experience with human relations. I feel that the most important source of my ideas is the teachings of Jesus of Nazareth which deal with how we should feel and behave toward our fellow men, as they are related and interpreted in the New Testament.'

"4. Give the name and present address of the individual upon whom you rely most for religious guidance.

'I do not rely particularly on any individual for religious guidance.'

"5. Under what circumstances, if any, do you believe in the use of force?

'I believe in the use of force by society to restrain an individual whose activities would jeopardize the wellbeing of others—that such a person should be recognized as being ill—that society should take steps to keep him in such a way that he cannot harm others (permitting him to live the best life possible while being so restricted)—that treatment should be given to rehabilitate him and to permit his freedom to be safely restored if rehabilitation is possible.'

"6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

'I have made an effort to live peaceably with my fellow men, in a spirit of understanding, appreciation, love and kindness and I have encouraged others to do likewise.'

On August 7, 1951, appellant appeared for interview before the Local Board regarding his conscientious objector claim and the Board continued him in Class I-A, and the day after sent him notice thereof. By letter received August 20, 1951 (dated August 18) appellant notified the Board that he wished to appeal his classification. Also, on August 20, 1951, the Board received from his school a College Student Certificate (SSS Form 109) showing that he was not in college attendance after June 9, 1951, and that he was in the lowest one-fourth of his class. On September 12, 1951, appellant visited the Board and examined his file and copied portions thereof at which time he mentioned that he had an attorney. On October 9, 1951, he was again classified I-A (apparently the Board did this because of the receipt of Form 109, although it did not have to) and appellant was so notified on SSS Form 110. Appellant inspected his file on October 12, and a week later informed the Board he was appealing his classification. Since he had been classified I-A on August 7, and had appealed his status, his file had been forwarded to the Appeal Board on October 16, and in turn forwarded to the Department of Justice for investigation and hearing. The Hearing Officer and the Department of Justice recommended that he be classified I-A. On June 23, 1952, appellant was classified I-A by the Appeal Board.

"7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above?" If so, specify when and where.

'No, I have expressed my views to individuals, but not to groupes [sic.].'"

On July 23, 1952, he was ordered to report for induction on August 7, 1952, as a postponed registrant. A letter was received August 1, 1952, by the Board from appellant's attorney, Mr. Teitz, requesting postponement of induction. One week later, the appellant refused induction. He was reported as a delinquent and his file was forwarded to the United States Attorney. It turned out a procedural error caused the Board to take his name off the delinquent list and to reorder him for induction on September 15, 1952. Again, appellant inspected his file on the 4th day of September, 1952, and on September 15 he refused to be inducted.

Appellant was thereafter indicted for his refusal to be inducted, but the government dismissed its case when the court ordered F.B.O. reports admitted into evidence so that an *in camera* inspection could be made.[4] The Local Board, on May 26, 1953, received authority to reopen appellant's file and after the reopening, on June 16, 1953, appellant was again classified I-A. Thereafter, appellant was accorded a personal appealance, and we set out a summary of occurrences in the margin.[5] Appellant offered no additional evidence on

---

[4]Not a valid practice under the decisions in *White v. United States*, 9 Cir., 215 F. 2d 782, and *Campbell v. United States*, 4 Cir., 1955, 221 F. 2d 454. See, also, *Kaline v. United States*, 9 Cir., decided June 11, 1956, (No. 14635), ... F. 2d .....

[5]PERSONAL APPEARANCE, July 7, 1953.

The registrant was sworn in.

The registrant was asked if his beliefs had changed since his interview with the Board on August 7, 1951. He replied that he still held the same point of view, and that he still did not believe in a Supreme Being.

his conscientious objector claim and was advised that he would be continued in Class I-A and was notified

---

The Chairman of the Board then read the minutes of the above mentioned interview which was discussed intermittently as follows:

"Registrant was asked what he wished to discuss. He replied that he wished to become a Conscientious Objector, that he thought that war was not a good thing, that human life was most important, and that war was destroying it.

"Registrant was asked where he attended church, to which he replied that he did not attend any particular church."

Here the registrant said that he became a member of the Unitarian Church on Easter Sunday, March, 1952, and is presently a member of that church.

"Registrant was asked if he had ever read what was required of one who intended to become a citizen of the United States, and if he just accepted his citizenship. Registrant replied, 'Well, no—' ".

At this point the Board asked if he still did not know the requirements of becoming a citizen and why he had answered "No" to the question. He said he did not understand just what the Board meant when asked before, but that he thought he knew what was required of a citizen.

"Board then stated that it was not the intention of the board to change the registrant's mind, that he would be given every right, but that they wished to make him *think*. He apparently was 'not working at being a conscientious objector' inasmuch as he was not associated with any church. His attention was called to the fact that it was necessary to kill to maintain human life; that is, animals for meat, etc., that self-preservation, too, was the first law of nature."

Reference was again made to the fact that he had since become a member of the Unitarian Church.

The reading of the minutes of the interview continued:

"The registrant stated that he felt that this" (self-preservation) "was true of animals, but not true of human being.

"Registrant was asked when he first decided to become a Conscientious Objector. The registrant replied that in the past six months he had come to the conclusion that he could not take part in taking another person's life.

"Registrant was asked if he thought anyone liked the prospect of taking the life of another, even when it seemed necessary to the preservation of our life.

"Registrant explained that he felt that human beings had reasoning power, and should solve their problems without fighting.

"Registrant was told that, inasmuch as he had stated that he did not believe in a Supreme Being, he appeared confused, that he had been a wanderer from one church to another.

(THE CHAIRMAN READ FROM THE REGISTRANT'S FORM 150)

"Registrant then offered the statement that he was now connected with the Christian Church of Pasadena."

Here the registrant interrupted to bring out the fact that he was not a member of the Pasadena church, but that he did participate in activities connected with the church.

"Registrant was questioned concerning his parents. He said that his mother and father were divorced, that he was living with his mother.

"The chairman of the board, Mr. Scott, said, 'I mean this kindly—you are apparently on a merry-go-round in so far as your thinking is concerned. Do you ever talk to the pastor?' "

Here the Board asked the registrant if he had ever discussed being a Conscientious Objector with anyone. The registrant said he had talked it over with

officially thereof on July 8, 1953. On July 20, 1953, a letter was received from appellant appealing that

---

Glen Smiley, who is leader of an anti-war organization called the Fellowship of Reconciliation.

"Registrant was then asked what he really was trying to bring out concerning the world situation.

"Registrant then replied that he felt that war was not the way, that we ought to be friendly to the Russians. The registrant stated that he would like to see disarmament.

"It was pointed out to the registrant that Kellogg brought about disarmament, and as a result we were in a mess today. It was suggested that the registrant read both sides of history.

"It was also brought out that policemen served somewhat the same purpose as an army at this time, that we paid taxes to pay the salaries of policeman, that they were there in case a need arose.

When questioned again regarding his belief on these points the registrant said he does believe that we should maintain a police force. He also stated that he thinks we are in part to blame for world conditions today.

Regarding his education, the registrant said that he resumed his studies at Chapman College about two weeks ago, and that he has less than one year to finish at Chapman. He plans to teach school, he said, beginning with the elementary grades, then High School.

During the year previous to returning to school he had been working for the telephone company as a motorized messenger, the registrant added. He earned $49. a week there, he said, and was able to save a part of his earnings for his school expenses.

The Chairman of the Board then continued reading the minutes of the interview:

"Registrant was further questioned concerning the apparent inconsistency of his Conscientious Objector's claim; that is, that he upheld the teachings of Jesus, but did not believe in a Supreme Being.

"Registrant stated that he did not accept all that Jesus taught, that he accepted the Christian philosophy only in so far as it applied to the relationship of one individual to another."

Each time when asked the registrant insisted that his beliefs were still the same as brought out in the interview.

"Registrant was informed that in the ten years of service of the board members, he, the registrant, appeared to be one of the most confused registrants they had ever met.

"Registrant's reply was that he did not feel confused.

"It was again brought out that registrant had gone from one religious belief to another, and had finally come to the conclusion that he did not believe in a Supreme Being, but was still associated with a church.

"Registrant was asked if he accepted a salary in his church activity. He said that he did not, and then went on to explain that he believed in nature, and in a natural process, that he could not see a mind guiding our affairs.

"Registrant was informed that a Conscientious Objector who was sincere in his beliefs could go into the service as a non-combatant, that he could be of some use in caring for the injured, as a Chaplain's assistant, etc.

"Registrant asked for a further explanation of the word 'non-combatant'. It was explained that it meant participation in some way where the bearing of arms was not necessary.

"The registrant replied that his position was such that he would not contribute to war in any way.

"The board pointed out that anyone who was gainfully employed possibly contributed to war in some way; that is, the production of food or the

classification.[6] Appellant's file was then forwarded to the Appeal Board and it was referred to the United States Attorney's office for investigation, hearing, and recommendation by the Department of Justice. The United States Attorney sent the file back to the Appeal Board with the following notation:

> "It appears from the registrant's file that he does not believe in a Supreme Being. In order for a registrant to qualify for a conscientious objector exemption, he must be opposed to war in any form *by reason of his religious training and belief.* Reli-

---

production of anything might contribute indirectly, or at least might be indirectly connected with it. One had to pay taxes, also, which was a contribution to defense.

"Registrant was then asked what he honestly felt he could contribute to the world. He said that he expected to do what he could to reconcile the countries of the world.

"Registrant was questioned as to how he subsisted. He said that his mother worked, that he lived with her and did odd jobs, that he had an insurance policy from his grandmother."

To the last statement the registrant added that the money from the insurance policy had been spent.

"Board informed registrant that he had not convinced them that he was truly a conscientious objector, that they could see nothing but a continuation of I-A, and then informed him of his appeal right.

"Registrant said that he did not know what else he could say to influence them (the board)."

This concluded the reading of the minutes of the interview of August 7, 1951, and reference was again made to the beliefs of the Unitarian Church.

The board questioned the registrant as to whether or not Unitarians believe in a Supreme Being, to which he replied that some of them do and some do not believe that there is a Supreme Being. He added that Unitarianism is Humanitarian, and their main interest is in the welfare of human beings.

The registrant was also asked if it was true that the Unitarian Church has had a great number of meetings which were anti-American, pro-Russian, and that Paul Robeson sang there. Registrant replied that he does not approve of Paul Robeson, of some of the things he has done.

The Board advised registrant that he could submit any additional information for his file. Also that he would be continued I-A by the Board, and was reminded of his right of appeal.

The registrant then left, and the Board members reviewed the testimony and the complete file. [From Report dated July 7, 1953, Selective Service System, Local Board No. 99, 5507 Santa Monica Blvd., Los Angeles 38, California]

---

[6]We note that under regulation §1626.2(c)(1), in Title 32 C.F.R., appeals must be made within 10 days of the mailing of the notice of classification. No point is made of this untimely appeal.

gious training and belief is defined by the statute as a belief in a Supreme Being involving duties superior to those arising from any human relation. Thus, the registrant does not have a claim within the meaning of the statute granting the exemption. By reason of the foregoing, the Department of Justice has no jurisdiction to conduct the inquiry and hearing in this case."

On December 15, 1953, the Appeal Board classified appellant I-A. Appellant was mailed SSS Form 252, Order to Report for Induction, ordering him to report for induction on January 8, 1954. On the date specified appellant reported to the induction station but refused to be inducted, and there signed a written, dated, and witnessed statement to that effect. Prosecution followed.

THE APPEAL

First, appellant argues that he was denied due process of law because the Board failed to post the names and addresses of Advisors to Registrants as required by the regulation §1604.41 of Title 32 C.F.R. (1951 Ed.). Mere failure to appoint advisors or the failure to post the names and addresses of advisors is not *per se* a violation of due process; and that lack of due process exists only when substantial prejudice is shown. *Uffelman v. United States.* 1956, 9 Cir., 230 F. 2d 297; and *Kaline v. United States,* 9 Cir., 1956, (decided June 11, 1956, No. 14635) ..... F. 2d ..... Appellant at the trial testified that he contacted the local board and asked the name of an appeal officer from whom he could get advice. He was given the name of an appeal officer and he contacted him. Further, appellant on many occasions inspected his file and copied portions thereof. He told the board that he had an attorney and his attorney contacted the Board. A Selective Service official testified at the trial that although no one was labeled with the title "Advisor to Registrants", there were others in the Board's office who performed the same function. No prejudice is shown.

Next, appellant argues that there was failure of proof that he [appellant] had refused to submit to induction, after being warned of the penalty. This issue was not raised at the trial, and is not included in appellant's Points on Appeal, as required by the rules of this court.[7] However, the record shows the following writing:

[7]See Rule 17(6), Rules of the United States Court of Appeals for the Ninth Circuit.

"January 8, 1954

"I refuse to be inducted into the Armed Forces of the United States."

/s/ "Arthur P. Clark

"Witnessed by:

/s/ "Earl S. Beydler, Capt. Inf.

/s/ "George J. Newton Jr.,
M/Sgt., U.S.Army."

Appellant argues that *Chernekoff v. United States*, 9 Cir., 1955, 219 F. 2d 721, is exactly the same case as the instant one. The two cases differ. The point as to failure of proof of refusal to be inducted, was raised in Chernekoff. The Chernekoff statement was not *dated*. There is not a scintilla of evidence in the record in our instant case that appellant was denied an opportunity to take the "step forward". In Chernekoff, this was not true. As we recently said in *Kaline v. United States*, 9 Cir., 1956 (decided June 11, 1956, No. 14635), ... F. 2d ....., in a like situation:

> ". . . The presumption is that the legal steps were taken and if appellant wanted to overcome this presumption, he should have made the point at the trial."

Appellant further argues that he was entitled to an investigation and hearing by the Department of Justice on his *second* and last appeal and the failure to grant him such a hearing and investigation rendered his order to report for induction void. We find this argument unsound for several reasons. We reiterate that appellant had a full and complete investigation and hearing by the Department of Justice on his *first* con

scientious objector claim made in 1951.[8] The Appeal Board had on June 23, 1952, decided against his claim and classified him I-A. On June 7, 1953, the appellant was given a personal appearance after he had been again classified I-A by the Local Board. At this personal appearance appellant offered no additional evidence on his previous claim to conscientious objector status. Rather, at this appearance he reiterated without change his previously expressed views and he maintained a lack of belief in a Supreme Being. The appeal was untimely (see footnote 6, supra).

Appellant here argues that the lapse of time since his first appeal as to his denial of conscientious objector status, is in itself a sufficient ground for requiring a new investigation and hearing. We disagree. Here, the original investigation and hearing may not have been required under the regulations. Nothing new was developed at his interview, and his beliefs were exactly th same. W do not hold that a change of belief may not come about in the passage of time, but the mere passage of time is not significant.

Appellant argues that "all" claims to conscientious objector status require investigation and hearing. We disagree. The statute is clear as to what Congress intended when it created an exemption from service for persons who are honest and sincere conscientious objectors. The statute, Section 6(j) of the Universal

[8]We note that appellant may not have even been entitled to this first investigation and hearing, due to the fact that his SSS Form 150, on its face, clearly showed that he was not a conscientious objective within the statutory definition because of his lack of belief in a Supreme Being.

Military Training and Service Act of 1948 as amended, Title 50, U.S.C.A. Appendix §456(j) provides in part:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, *by reason of religious training and belief,* is conscientiously opposed to participation in war in any form. *Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being* involving duties superior to those arising from any human relation, *but does not include essentially political, sociological or philosophical views or a merely personal code.* . . . Any person claiming exemption from combatant training and service *because of such conscientious objections* shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board." [Emphasis supplied]

We note that we are not here dealing with the issue of the sincerity or veracity of appellant's beliefs,[9] but rather with the problem whether any and every claim of conscientious objection requires an investigation and

---

[9]This fact distinguishes our case from two cases in which it was held error to deny a registrant an investigation and hearing. See: *DeMoss v. United States,* 8 Cir., 1955, 218 F. 2d 119, reversed, 349 U.S. 918; and *Bates v. United States,* 8 Cir., 1954, 216 F. 2d 130, reversed 348 U.S. 966. These two cases cited by appellant in his supplemental brief filed at the time of the oral argument before this court, dealt with a denial of an *original investigation and hearing* and in both cases the registrant's "claim" was within the statutory definition, and the issue was the registrant's sincerity in his beliefs. That is not the situation in our instant case.

hearing. From the face of appellant's SSS Form 150, it is ascertainable that appellant clearly does not fall within the statutory definition of a conscientious objector. He lacks belief in a Supreme Being; he does not have these beliefs "by reason of religious training and belief." He is agnostic in thought,[10] and holds his views as a "result of a gradual development of [his] thinking over a long period of time—of [his] *study* and observation and experience with human relation." Nowhere does he state whether his "belief in a Supreme Being involves duties which to [him] are superior to those arising from any human relation." (Series II of SSS Form 150, Question 2. See footnote 3, supra.)

It is thus obvious that appellant is the type of "objector" which the statute was designed to exclude (i.e., those holding views based on political, sociological, or philosophical views or a merely personal code). Appellant does not fall within the statutory definition, and the denial of his "claim" is not subject to investigation and hearing by the Department of Justice. Even if it were held that his claim were within the definition, he still was not entitled to a *second* hearing and investigation, due to the fact that he had already had one hearing and had made no claim of change of belief since his first denial of conscientious objector status. A registrant is not entitled to repetitious determinations of identical issues. See *Davidson v. United States*, 9 Cir., 1955, 218 F. 2d 609, and the same case on grant-

[10]We mean no criticism, but merely point out that the provisions for conscientious objector classification were not met by appellant.

ing certiorari, 349 U.S. 918, where the Supreme Court said:

> "The petition for writ of certiorari is granted and the judgment of the Court of Appeals is vacated. The cause is remanded to the Court of Appeals *for consideration of whether petitioner's conscientious objector claim comes within the provisions of Sec. 6(j) of the Universal Military Training and Service Act,* in which event this case would be governed by *Gonzales v. United States,* 348 U.S. 407." [Emphasis supplied]

After the Supreme Court remanded *Davidson* to our court, we considered whether the selectee's claim came within the statute, and held, in *Davidson v. United States,* 9 Cir., 1955, 225 F. 2d 836, that it did not. Certiorari was denied, 1955, 350 U.S. 887. We find in the instant case no denial of due process because of the denial of the second hearing.

Next, appellant argues that he was not given a full and fair hearing before the Hearing Officer of the Department of Justice on his *first* claim to conscientious objector status, because the Hearing Officer withheld adverse evidence from him at the hearing. He argues that this "tainted" report of the Hearing Officer as a result of his appearance, is not a true picture because he did not have an opportunity at that time to rebut the withheld information. He then argues that the Appeal Board, when it was considering his *second* claim to conscientious objector status, would take into consideration this "old" Hearing Officer report and recommendation and, because that recommendation was

"tainted", he was thereby prejudiced. We note, first, that the appellant did not raise this point at the trial until after he had been convicted. Appellant had taken the stand to testify in his own behalf and made no mention of this supposed "tainted" report or the supposed withholding of adverse evidence. When he did bring the matter up, he merely made a general allegation, "I didn't receive the information that he had against me, as the *Dickinson* case says is required." No proof was offered at this time to substantiate the charge. Instead three days later, appellant submitted an affidavit in which he stated his *recollection* of what he had previously testified to when he first had been indicted and trial commenced before another judge. At that trial, the indictment was dismissed by the government when the trial judge ordered the production of the F.B.I. secret investigative reports.[11] There is nothing in the record to enable us to ascertain whether the Hearing Officer did or did not withhold adverse information. We hold against appellant on this point.

But the controlling point here, though, is the fact that after this assertedly "tainted" report was sent to the Department of Justice and also to the Appeal Board and a decision had been made, the appellant was accorded a second determination by the Appeal Board as to his conscientious objector claim. The purpose of giving the registrant a fair resume of any adverse information is to enable him to rebut it if he can. *Simmons v. United States,* 348 U.S. 397.

---

[11]See footnote 4, supra.

The Hearing Officer's summary and the Department's recommendation (as to his *first* claim) were placed in appellant's file on June 23, 1952. Appellant's file reveals that on June 24, 1952, appellant visited the Local Board and examined his file and copied portions thereof. Also, from appellant's own affidavit as to what occurred at his first trial (March 12, 1953) which was dismissed by the government, as explained above, it is revealed that appellant knew at least by March 12, 1953, of any adverse evidence which he claimed was withheld from him. Subsequently, the Local Board reopened the classification and appellant personally appeared before the Board. No evidence at that time was presented which would in any way rebut this supposed adverse evidence, even though at this time the appellant knew of such information. Again, the Appeal Board considered his claim, and he also had an opportunity to answer or reply to the information of which he now complains.

Even if appellant could raise the point here (but we do not hold that he could), he cannot in the circumstances show prejudice. He has been given that which *Simmons v. United States,* 348 U.S. 397, supra, requires. We further note that no prejudice could be shown because the very "claim" that appellant was asserting was not a "claim" within the statutory definition of a conscientious objector, as discussed above. *United States v. DeLime,* 3 Cir., 1955, 223 F. 2d 96, is analogous. It was there said, at page 100:

"Consequently, the defendant's own uncontradicted statements demonstrate his claim was not based on 'religious training and belief', within the meaning of the statute. Therefore, he was not prejudiced by not receiving an adequate or fair resume of the F.B.I. report. The fact that his credibility was attacked in the report was immaterial for if everything he had said in support of his claim for exemption was fully believed his position continued to lie entirely outside of the statute. . . . [T]he defendant in the instant case could not have been prejudiced by the failure to furnish him a fair resume because the denial of conscientious objector status was necessitated by his own statements and was not based on any rebuttable information acquired from other sources, as in Simmons. This is not a case, where, despite a lack of prejudice, proceedings must be vitiated if procedural requirements are not met."

Appellant next argues that he did not have an opportunity to answer the adverse recommendation of the Department of Justice. This point, likewise, was not raised at the trial, nor included in appellant's Points on Appeal. We find no merit in the argument even if he were able to raise it here, since he had a second hearing before the Local Board and likewise had a second appeal to the Appeal Board. He at that time knew of the recommendation but did not rebut it. As we have seen above, he also could not be prejudiced here, either, since his "claim" was not within the meaning of the statute. There is nothing in the record to indicate that he did or did not receive a copy of the recommendation.

Lastly, the appellant argues that the "Supreme Being" clause in the statute is unconstitutional. He attacks the clause on two grounds. First, he argues by specious reasoning that the clause offends the VI Article (3rd Clause) of the United States Constitution which provides:

> ". . . but no religious test shall ever be required as a qualification to any office or public trust under the United States." Art. VI, §3, U. S. Constitution, U.S.C.A.

Appellant argues, rather circuitously, that conscientious objectors choose prison rather than violate their principles, and thereby, as felons, are ineligible for public office. The reasoning is specious.

Exemptions rest upon the grace of the government, and not upon constitutional rights. *Local Draft Board No. 1 of Silver Bow County, Montana, et al. v. Connors,* 9 Cir., 1941, 124 F. 2d 388; *Richter v. United States,* 9 Cir., 1950, 181 F. 2d 591, certiorari denied 340 U.S. 892; and *Cannon v. United States,* 9 Cir., 1950, 181 F. 2d 354, certiorari denied 340 U.S. 892.

Appellant further argues that the Supreme Being clause offends the First Amendment of the Constitution, to-wit:

> "Congress shall make no law respecting an establishment of religion . . . ."

This court has previously decided this point adversely to appellant in *George v. United States,* 9 Cir., 1952,

196 F. 2d 445 at 450, certiorari denied 344 U.S. 843, where it was said:

> "In sum, as the exemption from participation in war on the ground of religious training and belief can be granted or withheld by the Congress, the Congress is free to determine the persons to whom it will grant it, and may deny it to persons whose opinions the Congress does not class as 'religious' in the ordinary acceptance of the word. So assuming that the definition of 'religious training and belief' in Section 456(j) is restrictive, such restriction is within the constitutional power of the Congress."

See *Berman v. United States*, 9 Cir., 1946, 156 F. 2d 377, 381-385, certiorari denied 329 U.S. 795, rehearing denied 329 U.S. 833.

Judgment affirmed.

(Endorsed:) Opinion. Filed June 20, 1956.

Paul P. O'Brien, Clerk.

APPENDIX B

[TITLE OF COURT AND CAUSE]

JUDGMENT

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

(ENDORSED) Judgment
Filed and entered: July 27, 1956,
PAUL P. O'BRIEN, Clerk

APPENDIX C

[Trial of Court and Cause.]

Excerpt from Proceedings of Monday, July 23, 1956.

Before: STEPHENS, FEE AND CHAMBERS, Circuit, Judges.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellant, filed July 18, 1956, and within time allowed therefor by rule of Court for a rehearing of above cause be, and hereby is denied.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 21 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-nine (69) pages, numbered from and including 1 to and including 69, to be a full, true and correct copy of the entire record, excluding original exhibits of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the Appellant, and certified under Rule 21 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 31st day of July, 1956.

PAUL P. O'BRIEN
PAUL P. O'BRIEN, Clerk.

APPENDIX D

CONSTITUTIONAL PROVISIONS INVOLVED

VIth Article (3rd Clause) of the Constitution

"... ; but no religious test shall ever be required as a qualification to any officer or public trust under the United States."

1st Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assembly, and to petition the Government for a redress of grievances."

STATUTES AND REGULATIONS INVOLVED

Section 1(c) of the Act.

Section 1(c) of the Universal Military Training and Service Act (50 U.S.C. App. (Supp. V) §451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, §1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, §1(a) 65 Stat. 75.

Section 6(j) of the Act

Section 6(j) of the Act (50 U.S.C. App. (Supp. V) §456(j), 65 Stat. 75, 83, 86) provides:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required

of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Depart of Justice finds that his objections are not

sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be found to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."—50 U.S.C. App. (Supp. V) §456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the Act

Section 12(a) of the Act (50 U.S.C. App. (Supp. B) §462(a)) provides:

". . . Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ."

Section 1626.25 of the Selective Service Regulations (32 C.F.R. §1626.25 (1951 Rev.)) provides:

"*Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.* — (a) If an appeal involves the question

whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that case.

"(2) If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any

form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that class.

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless in the 'Minutes of Action by Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a) of this section.

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall

be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be found to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Department of Justice and the report of the Hearing Officer of the Department of Justice."

Section 1626.26 of the Regulations

Section 1626.26 of the Selective Service Regulations (32 C.F.R. §1626.26 (1951 Rev.)) provides:

"*Decision of Appeal Board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, that it shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

ARMY REGULATION

S. R. 615-180-1

"Processing registrants in special categories.

. . .

"b. *Registrants who refuse to submit to induction.*—Any registrant removed from the group as prescribed in paragraph 23, and who persists in his refusal to submit to induction, will be informed that such refusal constitutes a felony under the provision of the Selective Service Regulations. He will be informed further that conviction of such an offense under civil proceedings will subject him to be punished by imprisonment for not more than 5 years, or a fine of not more

than $10,000, or both. He will then be informed again of the imminence of induction using the language specified in paragraph 23a, and his name and service again will be called. If he steps forward at this time, he will be informed that he is a member of the armed service concerned, using the language specified in paragraph 23b. If, however, he persists in refusing to be inducted, the following action will be taken:

"(1) The registrant will be requested, but not required, to make a signed statement, dated, in his own handwriting, as follows: 'I refuse to be inducted into the Armed Services of the United States.' Such statement should be witnessed by at least two witnesses who shall affix their signatures to the statement. Registrants who refuse induction will not be furnished any means of transportation."

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Constitutional provisions, statutes and regulations involved	2
Statement	2
Argument	7
Conclusion	12
Appendix	13–16

CITATIONS

Cases:	
Chernekoff v. *United States*, 219 F. 2d 721	7, 8, 11
Davidson v. *United States*, 218 F. 2d 609, certiorari granted and case remanded, 349 U. S. 918, affirmed 225 F. 2d 836, certiorari denied, 350 U. S. 887	9
Kaline v. *United States*, C. A. 9, No. 14,635, decided June 11, 1956	8, 11
Rowton v. *United States*, 229 F. 2d 421, certiorari denied, 351 U. S. 930	11
Uffelman v. *United States*, 230 F. 2d 297	11
United States v. *Dorn*, 121 F. Supp. 171	11
United States v. *MacIntosh*, 283 U. S. 605	10
United States v. *Sutter*, 127 F. Supp. 109	11
Constitutional Provisions, Statutes and Regulations:	
Constitution of the United States, Article VI, Clause 3	13
Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:	
Section 6 (j) [50 U. S. C. App. 456 (j)]	13
Section 12 (a) [50 U. S. C. App. 462 (a)]	15
Regulations of the Selective Service System:	
32 C. F. R. [1951 ed.] 1604.41	10
Army Regulation, S. R. 615–180–1	7, 15
Miscellaneous:	
E. O. 10594, 20 F. R. 735	10

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 337

ARTHUR PARISETTE CLARK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 51–67; Pet. App. 2–21) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 20, 1956 (R. 50; Pet. App. 2), and a petition for rehearing was denied on July 23, 1956 (R. 69; Pet. App. 25). The petition for a writ of certiorari was filed on August 21, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner, a draft registrant, was improperly denied an opportunity to take the prescribed

steps forward for induction into the armed forces

2. Whether petitioner was improperly denied the procedural rights accorded by Section 6 (j) of the Universal Military Training and Service Act.

3. Whether Section 6 (j) of the Act, in providing an exemption from military service only for those persons conscientiously opposed to participation in war "by reason of religious training and belief," is constitutional.

4. Whether failure to have the names and addresses of "advisors" posted in the local board office as provided by the then applicable regulations was a denial of due process where registrars, appeal agents, board clerks, and board members were available to assist registrants, and petitioner himself was represented by an attorney.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The pertinent provisions of the United States Constitution, of the Universal Military Training and Service Act, and of the regulations involved are set forth in the Appendix, *infra*, pp. 13–16.

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of California of refusal to obey an order for induction into the armed forces of the United States. He was sentenced to four years' imprisonment (R. 3–4, 14–15). On appeal (R. 15–16), the judgment was unanimously affirmed (R. 68).

Pertinent facts shown by petitioner's selective service file, which was introduced in evidence as Government Exhibit 1 (R. 17), are as follows:

In his classification questionnaire, filed on October 4, 1948, with Local Board No. 99 in Los Angeles County, California, petitioner signed Series XIV, indicating that he was a conscientious objector (Ex. 4, 10).[1] On June 8, 1950, he was given SSS Form 150 for conscientious objectors, but he did not return it (Ex. 11). On October 3, petitioner was found acceptable for induction into the armed services (Ex. 17). The next day, the board received a letter from Chapman College stating that petitioner was attending classes regularly (Ex. 23). On October 28, he was ordered to report for induction on November 8, but he failed to do so (Ex. 11). On November 14, 1950, the board postponed induction until June, 1951, by reason of petitioner's student status (Ex. 11, 24).

On June 27, 1951, petitioner received another SSS Form 150, which he filed with the board the next day (Ex. 11, 26–29). On this form, in answer to the question whether he believed in a Supreme Being, petitioner put a cross after the box indicating "No", and wrote, "I do not know whether or not a supreme being exists" (Ex. 26). He further stated, "My present beliefs are the result of a gradual development of my thinking over a long period of time—of my study and observations and experience with human relations" (Ex. 27).

[1] The selective service file, a certified copy of which we are filing with the Court, will be referred to as "Ex." for the page numbers which have been circled. Page numbers underscored will be referred to as "Ex. u."

On August 7, 1951, at an interview with the local board, petitioner was questioned concerning the apparent inconsistency of his conscientious objector claim, *i.e.*, that he upheld the teachings of Jesus but did not believe in a Supreme Being. The reply was "that he did not accept all that Jesus taught, that he accepted the Christian philosophy only insofar as it applied to the relationship of one individual to another" (Ex. 30, 31). Petitioner was continued in a I–A classification after the interview (Ex. 11).

On August 20, 1951, the board received a College Student Certificate stating that petitioner had completed the college year ending June 9, 1951, and was in the lowest one-fourth of his class (Ex. 34). On September 12, petitioner examined and copied parts of his file at the board's office, and mentioned that Mr. Tietz was his attorney (Ex. 35). On October 9, petitioner was again classified I–A and on October 11 was given notice of this on SSS Form 110 (Ex. 11). He completed the copying of his file at the board office on October 12, and on October 19 appealed his classification (Ex. 35, 36).

After a hearing (Ex. 42–48) on his conscientious objector claim, the hearing officer concluded that petitioner is "not religious and that if he is a conscientious objector, his ideas in that regard are predicated upon his own feelings and not upon a religion" (Ex. 49). On June 5, 1952, the Department of Justice agreed with the hearing officer in recommending against classification of petitioner as a conscientious objector (Ex. 41). On June 23, 1952,

petitioner was classified I–A by the appeal board (Ex. 11).

On July 23, 1952, petitioner was directed to report for induction on August 7 as a postponed registrant (Ex. 11, 65). On August 1, the board received a letter from his attorney seeking postponement of induction (Ex. 13, 71–72). On August 7, petitioner refused to be inducted into the armed forces (Ex. 74–75, 78). Since the previous order for induction had been given on an improper form (Ex. 13), petitioner, on September 3, 1952, was given an order on the correct SSS Form 252 to report for induction on September 15 (Ex. 13, 87). On September 4, petitioner examined his file at the board office (Ex. 13), and on September 15 he again refused induction (Ex. 88–89, 110).

Thereafter petitioner was indicted for refusal to be inducted, but the Government dismissed the case because the district court ordered the F. B. I. reports to be submitted in evidence (Ex. 111u). On May 26, 1953, the local board received authority to reopen petitioner's file, and on June 16 he was again classified I–A (Ex. 15u, 114u). Upon petitioner's request he was accorded a personal appearance before the local board on July 7, 1953 (Ex. 15u, 115–117u). At that time, when asked if his beliefs had changed since the interview before the local board on August 7, 1951, he stated that "he still held the same point of view, and that he still did not believe in a Supreme Being" (Ex. 118u). Petitioner submitted no additional evidence regarding his conscientious objector claim, and

the board advised that he would be continued in classification I–A (Ex. 122u). On July 8, petitioner was officially notified of his I–A classification. He noted an appeal (Ex. 15u, 123u).

Petitioner's file was forwarded to the appeal board, and then to the United States Attorney's office for investigation, hearing, and recommendation by the Department of Justice (Ex. 15u, 124u, 126u). In a letter to the appeal board, the United States Attorney returned the file with the notation set out in the margin [2] (Ex. 15u, 127u). On December 10, 1953, the appeal board classified petitioner I–A, and on December 24 a notice was mailed to him to report for induction on January 8, 1954 (Ex. 15u, 128u, 129u). On that date he reported but refused to be inducted. He signed a written statement, dated January 8, 1954, and witnessed by an army captain and master sergeant, reading: "I refuse to be inducted into the Armed Forces of the United States" (Ex. 183u). The Army notified the United States Attorney of petitioner's refusal (Ex. 178u), and prosecution followed.

---

[2] "It appears from the registrant's file that he does not believe in a Supreme Being. In order for a registrant to qualify for a conscientious objector exemption, he must be opposed to war in any form by *reason of his religious training and belief*. Religious training and belief is defined by the statute as a belief in a Supreme Being involving duties superior to those arising from any human relation. Thus, the registrant does not have a claim within the meaning of the statute granting the exemption.

"By reason of the foregoing, the Department of Justice has no jurisdiction to conduct the inquiry and hearing in this case" (emphasis in original).

At the trial, the district coordinator for Selective Service in the area covering Local Board No. 99 testified that there was no posting on the bulletin board of a list of technical advisors as such, but that the names of registrars and other persons who might assist registrants were posted. Also available for this purpose were "Government appeal agents, clerks of the local board, the local board members, and all of the staff at [his] office * * *" (R. 19–20). Petitioner testified that on one occasion he inquired at the local board as to the name of the appeal officer and that he later talked with him (R. 27).

ARGUMENT

1. Petitioner contends that there was a failure of proof to show sufficient compliance with Army Special Regulation 615–180–1, *infra* p. 15, since the evidence disclosed that he had only one chance, instead of two, to refuse induction, and that he was never warned of the penal consequences of his refusal (Pet. 2–3, 9–10). This contention, not raised at the trial and not included in petitioner's points on appeal, is without substance.

Petitioner relies upon the previous Ninth Circuit decision in *Chernekoff* v. *United States*, 219 F. 2d 721, 725. In *Chernekoff*, however, the registrant "was not given the prescribed opportunity to step forward"; and even though he signed a statement refusing induction, there was "nothing in the evidence to indicate when or under what circumstances it was written or was delivered" (219 F. 2d at 725). In the instant case, as the court below points out (Pet. App. 12),

there was not a scintilla of evidence that petitioner was denied an opportunity to take the step forward, and his written refusal was dated January 8, 1954, the day he was ordered to report for induction (Ex. 183u). In any event, apart from distinguishing features of the two cases, the Ninth Circuit was at liberty to hold its own *Chernekoff* decision not controlling.

In a similar situation in *Kaline* v. *United States* (C. A. 9, No. 14,635, decided June 11, 1956), the court again distinguished *Chernekoff* as not authoritative and stated (slip op., p. 6):

> * * * we have made an exhaustive search of the record and find that there is not one scintilla of evidence which would point to the failure of the government to allow appellant to take the one "step forward." The presumption is that the legal steps were taken and if appellant wanted to overcome this presumption, he should have made the point at the trial.

Likewise, in the instant case, there was a rebuttable presumption that the government had complied with the provisions of Special Regulation 615–180–1. Petitioner, who was represented by an attorney, made no attempt to overcome the presumption even though he testified on his own behalf at the trial (R. 23–27). Significantly, at no time has petitioner asserted that he did not know the penal consequences of refusal of induction, or that he desired to take the prescribed step forward, but was denied the right to do so.

2. Contrary to petitioner's contention (Pet. 3, 10–11), he was not entitled to a second hearing on his conscientious objector claim.

Petitioner had already had a full hearing. There were no new facts at the time he took his second appeal. His assertion that the passage of time was a sufficient "new fact" to justify reinvestigation (Pet. 3) was properly rejected by the court below (Pet. App. 13) since he himself told the board in July 1953 that his views had not changed in the interim (Ex. 118u).

Moreover, the first hearing had accorded petitioner more than his due. Since he disclaimed belief in a Supreme Being, he did not present even the color of a claim cognizable under the statute. By his own statement, he took himself out of the scope of Section 6 (j) and therefore out of the provision for a hearing. *Davidson* v. *United States,* 218 F. 2d 609, 611–612 (C. A. 9), certiorari granted and case remanded, 349 U. S. 918, affirmed, 225 F. 2d 836, certiorari denied, 350 U. S. 887. In *Davidson,* this Court remanded for determination of the issue of the right to a hearing where there is a disclaimer of belief in a Supreme Being. The Ninth Circuit's holding that no hearing is required in that situation is more fully discussed in the government's brief in opposition to certiorari in No. 398, O. T. 1955, pp. 6–9.

3. The contention (Pet. 4, 11) that Section 6 (j) is unconstitutional in limiting its exemption to those who believe in a Supreme Being was rejected in the *Davidson* case, *supra.* As pointed out in the government's brief in opposition in No. 644, O. T. 1954, pp. 14–15, the privilege of a conscientious objector to be exempt from bearing arms comes not from the Constitution, but from Congress, which may grant or

withhold exemption as it sees fit. Cf. *United States* v. *MacIntosh,* 283 U. S. 605, 623–624. The statute does not interfere with any religion or lack of religion petitioner may choose to adopt. It merely fails to grant a privilege on the basis of a reasonable distinction—one which has been traditional in American history—between those whose beliefs stem from the concept of a Supreme Being and those having essentially personal, political, sociological, or philosophical views.

4. Petitioner contends that he was denied due process of law by reason of the failure to appoint "advisors to registrants" and to post their names and addresses in the local board office in accordance with the then applicable regulation, 32 C. F. R. 1604.41, *infra,* p. 15 (Pet. 4, 12–15).[3] The evidence showed, however, that although there were no advisors technically appointed, numerous other registrars, appeal agents, board clerks, and board members were available to give advice to inquiring registrants (R. 19–20). Petitioner admitted conferring with the appeal officer, whom he contacted after inquiring at the local board (R. 27). He was permitted on numerous occasions to examine and copy from his selective

[3] The regulations were changed on January 31, 1955 [E. O. 10594, 20 F. R. 735] from "shall" to "may" in order that appointments would be made only where the community situation demonstrated a need for such advisors. We have been advised that it has been the experience of many State Headquarters that the local board clerk, the Government Appeal Agent, and the local board members have ample time to advise registrants as to their rights and duties and to assist them in filling out questionnaires and other forms.

service file (Ex. 35, 13). Moreover, he was represented by his attorney, Mr. Tietz, as early in the proceedings as September 12, 1951, and Mr. Tietz was thereafter in communication with the local board regarding petitioner's case (Ex. 35, 71–72, 108u).

In this total setting, it is clear that petitioner was not prejudiced by the failure to appoint advisors or to post their names and addresses. See *Uffelman* v. *United States,* 230 F. 2d 297, 300–302 (C. A. 9); *Kaline* v. *United States, supra;*[4] *Rowton* v. *United States,* 229 F. 2d 421, 422 (C. A. 6), certiorari denied, 351 U. S. 930; *United States* v. *Dorn,* 121 F. Supp. 171, 178–179 (E. D. Wisc.); *United States* v. *Sutter,* 127 F. Supp. 109, 119 (S. D. Cal.).

The alleged items of prejudice listed by petitioner are purely "speculative" and "theoretical". Cf. *Kaline* v. *United States, supra* (slip op., p. 5). They are, for the most part, conjecture as to what lines of procedural defense might conceivably have been pursued if petitioner had consulted an "advisor"; but there is no basis for assuming that such advice would have been any better than that which petitioner admittedly received from the appeal officer or from his own attorney. There is no specification as to what new evidence petitioner would have introduced at the second personal appearance before the board. Nor is there an indication as to particular evi-

[4] In *Kaline*, the Ninth Circuit made it clear that its observation in *Chernekoff* v. *United States, supra,* 219 F. 2d at 725, that it had "serious doubt as to the validity of such a practice" by the local boards [of not posting names of advisors under 32 C. F. R. 1604.41], was mere dictum (slip op., p. 5, fn. 7).

dence in his file, which if it had been emphasized before the board would have resulted in a different decision as to his classification. And, manifestly, it would have been of no avail for ministers to testify that petitioner really believed in a Supreme Being in the face of his continued disavowal of such belief.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

SEPTEMBER 1956.

APPENDIX

Constitution of the United States:

Article VI, Clause 3:

> * * *; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

First Amendment:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *

Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:

Section 6 (j) [50 U. S. C. App. 456 (j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to

such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice to-

gether with the record on appeal from the local board. * * *

Section 12 (a) [50 U. S. C. App. 462 (a)]:

Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Regulations of the Selective Service System: 32 C. F. R. [1951 ed.] 1604.41:

Advisors to registrants shall be appointed by the Director of Selective Service upon recommendation of the State Director of Selective Service to advise and assist registrants in the preparation of questionnaires and other selective service forms and to advise registrants on other matters relating to their liabilities under the selective service law. Every person so appointed should be at least 30 years of age. The names and addresses of advisors to registrants within the local board area shall be conspicuously posted in the local board office.

Army Regulations, S. R. 615–180–1 provides:

* * * * *

27. Processing registrants in special categories.

* * * * *

b. *Registrants who refuse to submit to induction.*—Any registrant removed from the group as prescribed in paragraph 23, and who persists in his refusal to submit to induction, will be informed that such refusal constitutes a fel-

ony under the provision of the Selective Service Regulations. He will be informed further that conviction of such an offense under civil proceedings will subject him to be punished by imprisonment for not more than 5 years, or a fine of not more than $10,000, or both. He will then be informed again of the imminence of induction using the language specified in paragraph 23a, and his name and service again will be called. If he steps forward at this time, he will be informed that he is a member of the armed service concerned, using the language specified in paragraph 23b. If, however, he persists in refusing to be inducted, the following action will be taken:

(1) The registrant will be requested, but not required, to make a signed statement, dated, in his own handwriting, as follows: "I refuse to be inducted into the Armed Services of the United States." Such statement should be witnessed by at least two witnesses who shall affix their signatures to the statement. Registrants who refuse induction will not be furnished any means of transportation.

U. S. GOVERNMENT PRINTING OFFICE: 1958

No. 337

FILED
NOV 1 3 195
JOHN T. FEY, CL

IN THE

SUPREME COURT

OF THE

United States

October Term, 1956

ARTHUR PARISETTE CLARK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR RECONSIDERATION

J. B. TIETZ
410 Douglas Building
S. Spring and Third Sts.
Los Angeles 12, Calif.
Attorney for Petitioner.

IN THE

SUPREME COURT

OF THE

United States

October Term, 1956

ARTHUR PARISETTE CLARK, *Petitioner,* vs. UNITED STATES OF AMERICA, *Respondent.*	No. 337

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR RECONSIDERATION

To the Supreme Court of the United States:

Comes now the petitioner, by his attorney, and files this, his Petition for Reconsideration of the Order heretofore entered by this Court denying his petition for writ of certiorari.

Petitioner respectfully urges the Court to reconsider its action for the following reasons:

Subsequent to the printing and filing of his Petition for Writ of Certiorari, two decisions have appeared that have a bearing on two of the points presented.

I.

Point: A selective service registrant may not be deprived of the statutory administrative appellate processing, upon a second, timely and valid appeal, merely because he had been given an administrative appellate processing twenty-three months earlier, upon his first, timely and valid appeal.

Case: United States vs. Krueger, E. D. Wisc. No. 268, decided July 9, 1956.

Petitioner presented this new decision, in a typewritten Supplementary Memorandum of Petitioner, very shortly before the denial of the Writ, and perhaps too late for consideration. Petitioner respectfully requests the Court to review the decision for its bearing on his above stated point (No. 2 in the Petition).

II.

Point: A selective service registrant may not be deprived of an administrative processing (after perfecting a timely and otherwise valid appeal) merely because he has indicated he does not believe in a Supreme Being.

Case: United States vs. Thomas, E. D. Wisc., 139 F. Supp. 427.

Petitioner was denied a reversal by the Ninth Circuit on the basis of its *Davidson* decision: " . . . A registrant is not entitled to repetitious determinations of identical issues. See *Davidson vs. United States,* 9 Cir., 1955, 218 F. 2d 609, . . . "

The *Thomas* decision distinguishes *Davidson* (and the facts of *Clark* would justify a similar conclusion) and this Court should adopt the *Thomas* viewpoint. It, rather than the law of *Davidson,* should be the law of the land.

WHEREFORE, it is respectfully urged that the denial of the writ be reconsidered.

J. B. TIETZ
Attorney for Petitioner.

CERTIFICATE OF COUNSEL

This Petition for Reconsideration is filed in good faith and not for the purpose of delay.

J. B. TIETZ
Attorney for Petitioner.